



# "THE CONTRACT"

**April 2001**





**IF ALL ELSE FAILS...**

**READ THE  
CONTRACT!**



# UNIFORM CONTRACT FORMAT FAR PART 14/15

## SECTION

### PART I - THE SCHEDULE

- A Solicitation/Contract Form
- B Supplies or Services and Prices/Costs
- C Description/Specifications/Work Statement
- D Packaging and Marking
- E Inspection and Acceptance
- F Deliveries or Performance
- G Contract Administration Data
- H Special Contract Requirements

### PART II - CONTRACT CLAUSES

- I Contract Clauses

### PART III - LIST OR DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

- J List of Attachments

### PART IV - REPRESENTATIONS AND INSTRUCTIONS

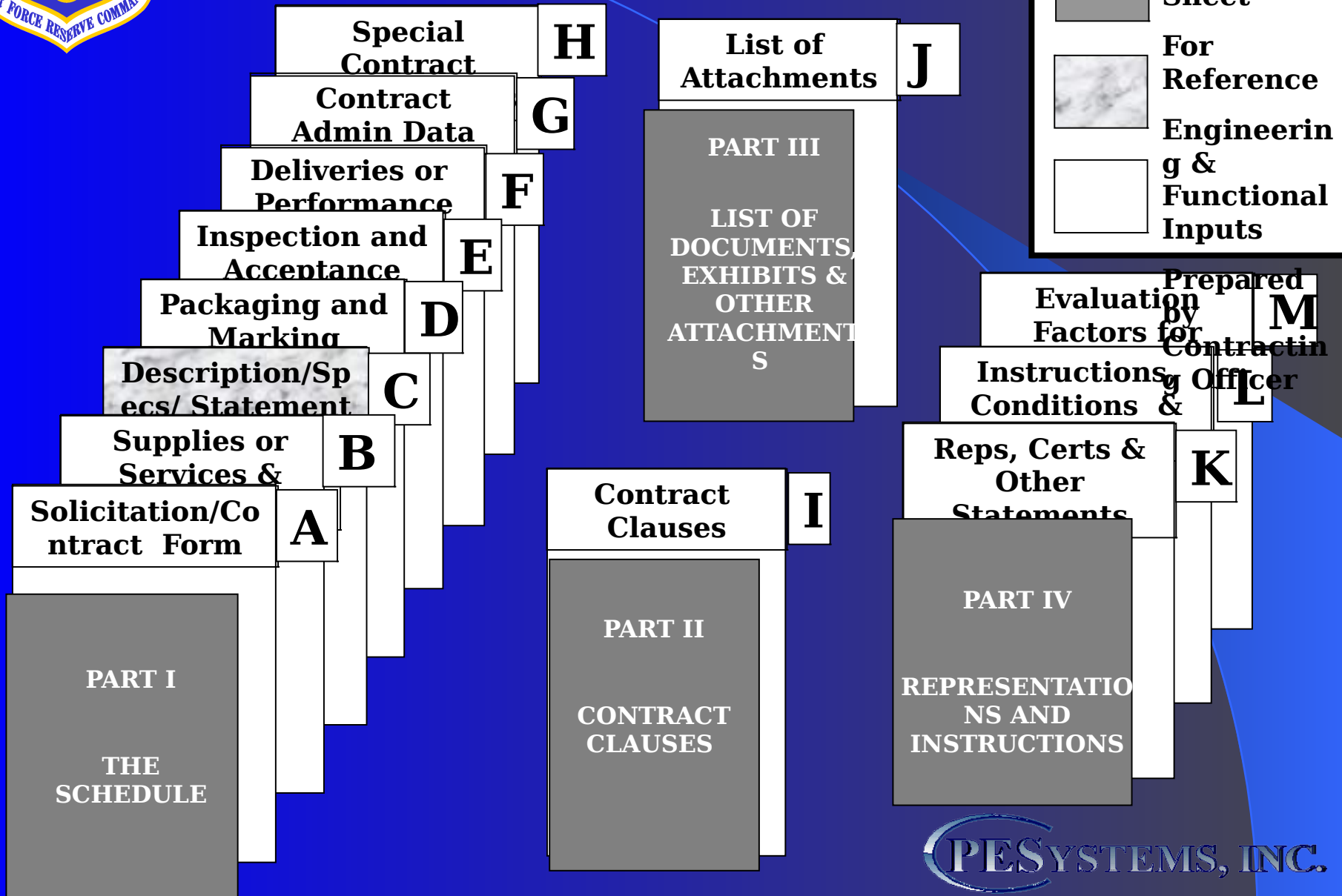
- K Representations Certifications & Other Statements of Offerors
- L Instructions, Conditions & Notices to Offerors

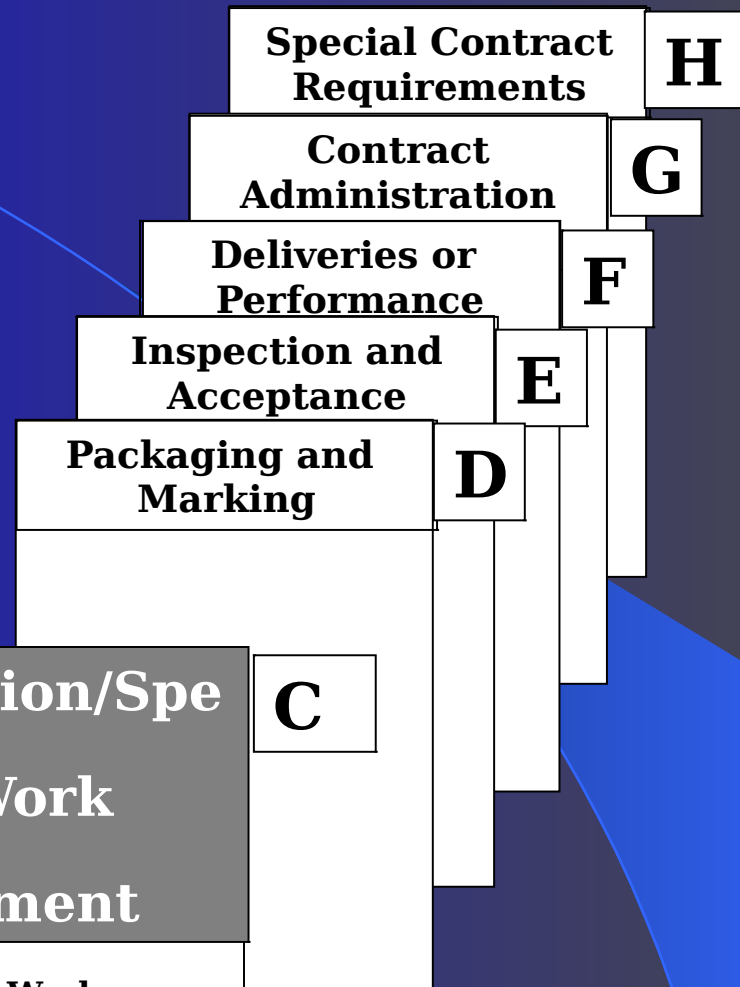
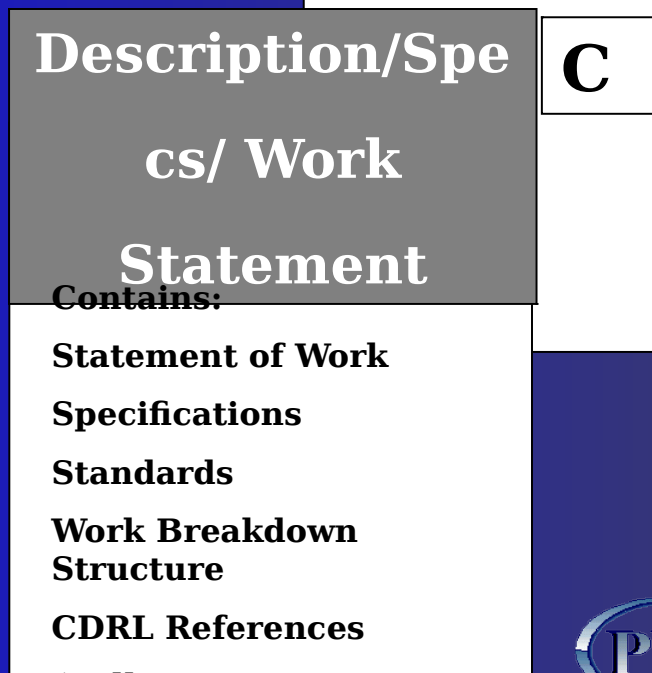
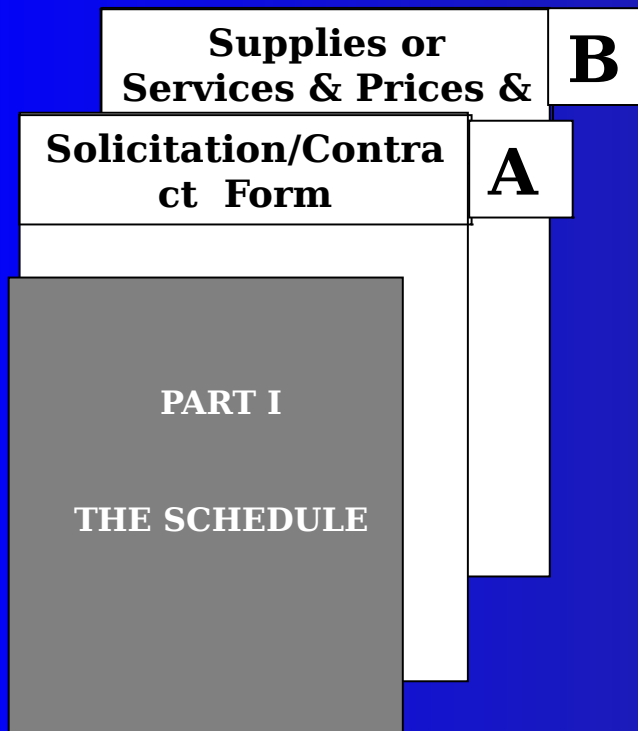
**PESYSTEMS, INC.**



# UNIFORM CONTRACT FORMAT

## FAR PART 15.406-1







# SPECIFICATION - A DEFINITION

**A voluminous and painstakingly dry document designed to harass, hamper, and confuse the manufacturer, disturb the digestion and emotional stability of congressmen, gnaw at the very foundations of democracy and provide simultaneous discrimination against both “big” and “little” business. It is written as a masterpiece of incoherence by a man who never saw the commodities specified and for bidders who won’t read it anyway. The item detailed bears no relationship to reality as it cannot be produced as specified and would be worse than worthless if it could. It is hopelessly incompatible with current production techniques, utilizes materials that are not available, was three years out of date when**



# **SECTIONS B (Ref), C (Ref) & J (Atch) - “CONTRACT DATA REQUIREMENTS LIST”**

- **DD Form 1423**
- **Tells contractors what data to deliver**
- **Explains the “when” and “how” of data delivery (paper or electronic)**
- **Gives preparation instructions**
- **Data is expensive - only buy what you need!**



# SECTION C - "STATEMENT OF WORK"

- **Outline tasks**
- **Define applicable standards**
- **Tells contractors "WHAT" not "HOW"**
- **Use "SHALL" to be binding**
- **Defines work scope**
- **Clear, concise, consistent**







# **THE RFP SECTION L - "INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS"**

- **Instructions and formats for offerors to follow in preparing their offers**
  - **Page limitations**
  - **Type size, any required software application use and electronic transmission method**
  - **Organization of proposal - volume numbers and titles**
  - **Permits easy comparison of one offeror to another**



# **THE RFP SECTION M - "EVALUATION FACTORS FOR AWARD"**

## **How a winner will be selected**

- **Evaluation factors**
  - Technical, cost, management, past performance, Small Business, schedule, supportability, etc.
  - Relative importance
- **Evaluation criteria**
  - How the evaluation factors will be analyzed to determine award
  - "Best Value" Method



# **ANTI-DEFICIENCY ACT 31 U.S.C. 1341 FAR 32.702**

**“No Officer or Employee of the  
Government May Create or  
Authorize an Obligation in Excess  
of the Funds Available, or in  
Advance of Appropriations Unless  
Otherwise Authorized by Law”**



# GOVERNMENT - PRIME CONTRACTOR AND SUBCONTRACTOR RELATIONSHIPS

- **“Privity of Contract” is the legal relationship between parties in a contract**
- **Government has “privity of contract” with the Prime Contractor**
- **Prime Contractor has “privity of contract” with the Subcontractor**
- **Government can only influence subcontractor through the prime contractor**



# **CONTRACT ADMINISTRATION - SUMMARY**

- **Key players:**
  - **Dept. of Finance Accounting Services (DFAS) - (pays you)**
  - **Defense Contract Audit Agency (DCAA) - (audits you)**
  - **Defense Contract Management Command (DCMC) - (comes in and eats doughnuts at meetings)**
- **Privity of Contract between Government and prime contractor**
- **Beware of constructive changes!**



# NO - NO's

- **Never direct the contractor except through the ACO or the PCO.**
- **Never Give the “appearance” of impropriety.**
- **Never be unprofessional in contract relations.**



# CONTRACT MODIFICATIONS

- **Supplemental agreements**
- **Change orders**
- **Terminations**
  - **Convenience**
  - **Default**
- **Engineering Change Proposal's (ECP's) - Contract Change Proposal (CCP's)**
- **Show cause - cure notice**



# **CONTRACT MODIFICATIONS - CHANGE ORDERS FAR 43**

- **Authority - changes clause**
- **Only PCO or ACO**
- **Within general scope of contract**
  - **Specifications**
  - **Drawings**
  - **Design**
  - **Packing**
  - **Shipment**
  - **Time/place of delivery**
  - **Government furnished material**





# TERMINATIONS FAR 49

- **Convenience** - Contractor entitled to payment for:
  1. Completed supplies/services
  2. Costs incurred for work in progress
  3. Costs incurred for work in settlement subcontractor claims
  4. Settlement costs, ex. Legal, accounting, storage, trans, etc.
- **Default** - Contractor Fails to:
  1. Perform work in contract within schedule
  2. Prosecute work, endangers performance
  3. Contractor responsible for excess costs, entitled to payment for all work delivered and accepted by government



# LEGAL ASPECTS OF GOVERNMENT CONTRACTING GOVERNMENT REMEDIES

- **Negotiate change**
- **Issue/implement change order**
- **Suspend or reduce payments**
- **Issue stop work order**
- **Terminate partial / total**
- **Issue "cure notice"**
- **Send "show cause" letter**
- **Terminate for default**
- **Off-set**
- **Liquidated damages**
- **File claim**
- **Debar and/or suspend contractor**
- **Prosecute civil / criminal**



# CONTRACTOR REMEDIES

- **Contracting officer**
- **Appeals Board ASBCA/GSBCA**
- **Alternate disputes resolution**
- **Courts - Federal**
  - **(USDC, Ct of Claims, Ct of Appeals, USSC)**
- **P.L. 85-804 - contract adjustment board**
- **Congress - private bill**
- **GAO - comptroller general (pre-award)**



# **FREEDOM OF INFORMATION ACT - U.S.C. 552 FAR Part 24**

## **Info to public: - Federal Register**

- Opportunity to read copy records**
- Provide copy upon request**

## **Exemptions to release:**

- 1. Records properly and currently classified**
- 2. Internal agency personnel rules practiced**
- 3. Statute specifically exempts disclosure**
- 4. Records containing trade secrets or proprietary commercial or financial information**
- 5. Interagency memos, letters not routinely available to a party in litigation with agency**
- 6. Personnel and medical files**
- 7. Records of investigation compiled for enforcing civil, criminal, or military law**
- 8. Records relating to examination, operating or condition of agency responsible for regulating or supervising financial institutions**



# **RIGHTS IN DATA FAR 27**

- **Government objective to obtain just enough data for needs while protecting interests of industry**
- **Government rights in data - test - who paid for development costs?**
- **Contract clauses:**
  - **Rights in data general**
  - **Government “unlimited rights”**
  - **Contractor**
  - **Responsibilities**
- **Rights in technical data**
  - **Unlimited**
  - **Government purpose license**
  - **Exceptions**



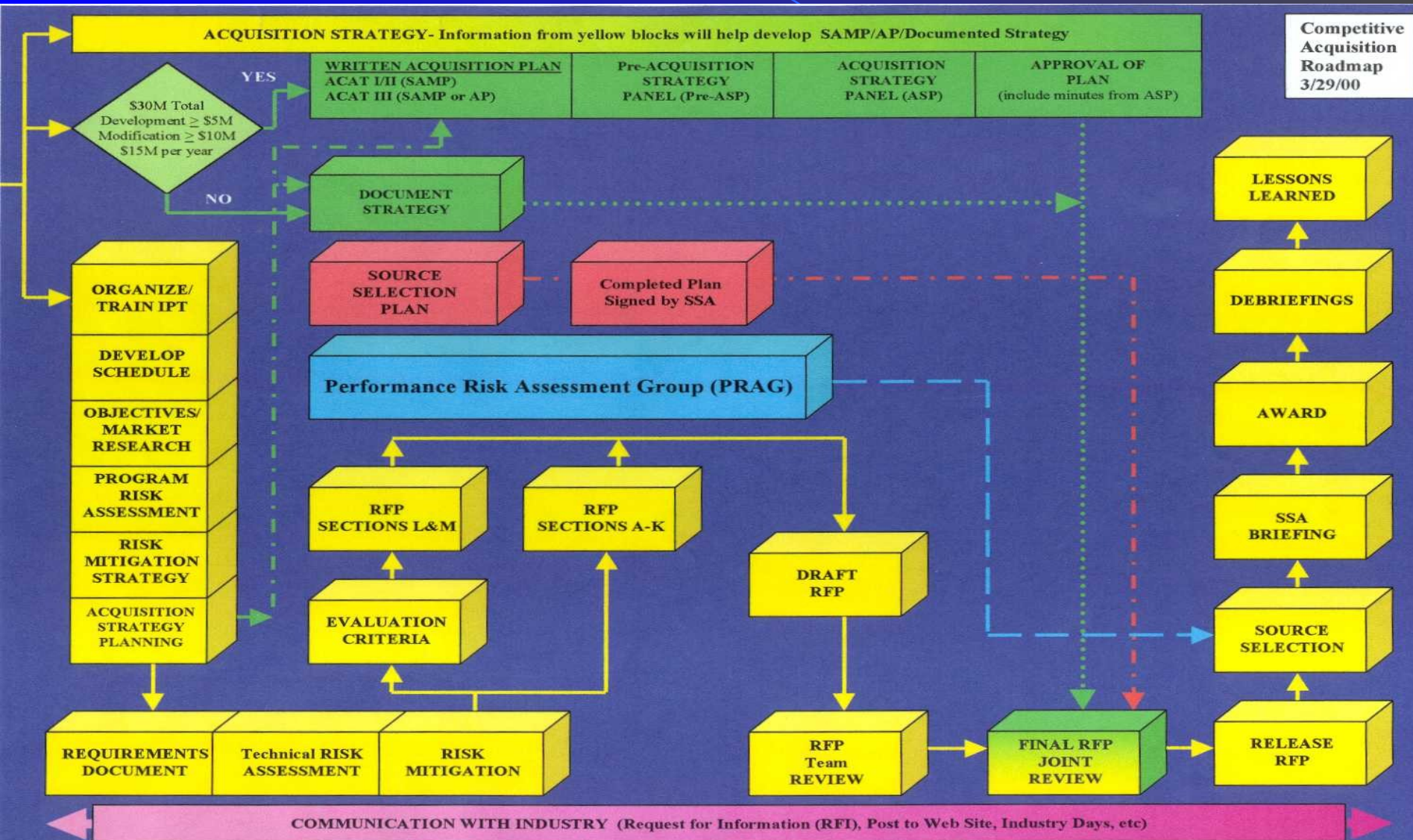
# **RIGHTS IN DATA FAR 27 (contd.)**

- **End product of R&D**
- **Withholding payments**
- **Competitive advantage**
- **Re-procurement**
- **Delivery**
- **Classification**
- **Marking**
- **O & M**





# Competitive Acquisition Roadmap





HERE

ONE WAY

START

Initial Meeting



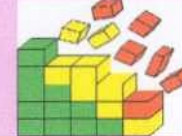
Effective IPT



Market Research



Risk Management



Acquisition Planning



Post Award

Lessons Learned

CPARs



Debriefings



Contract Award



Source Selection

# Critical Steps To A Successful Acquisition



Requirements



Requirements  
Risk Analysis



Final RFP



Draft RFP



Evaluation  
Criteria



Start RFP

As of: 4/03/00

# COMPETITIVE PROCESS





# SUMMARY

- **Read the contract**
- **Know the people**
- **Do not tell the contractor what to do**
- **Know your rights and remedies in disputes**
- **Contracts are meant to be modified**